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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,943	07/24/2003	Joseph V. Rustad	16010-07269	9924
758	7590	03/23/2007	EXAMINER	
FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041			JEAN, FRANTZ B	
			ART UNIT	PAPER NUMBER
			2151	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/23/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/625,943	RUSTAD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Frantz B. Jean	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 24 July 2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-29 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-29 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/29/03.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5)  Notice of Informal Patent Application

6)  Other: \_\_\_\_\_.

## **DETAILED ACTION**

This a first office action in response to application for patent filed on 07/24/03. Claims 1-29 are presented for examination.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 12/29/03 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

During patent examination, the pending claims have been "given their broadest reasonable interpretation consistent with the specification." The Federal Circuit's en banc decision in *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005)

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Vanlint US patent Number 6,922,417.

The applied reference has a common Assignee with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art

under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

As per claim 1, Vanlint teaches a computer system for calculating latency of a network (see abstract), comprising: an active request generator that generates periodic request to a node on the network; an active request log that stores request timing information regarding the timing of the periodic requests generated by the active request generator; a response handler that receives responses from the node; a response log that stores response timing information regarding the timing of the responses received by the response handler; and a latency curve (graphical display output, element 70 fig 3) generator that calculates a latency curve based upon the request timing information and the response timing information (see fig 3, 7-10; col. 2 lines 44-67; col. 3 lines 15-31; col. 4 lines 26-35; col. 5 lines 37-41).

As per claim 2, Vanlint teaches requests that are directed to an identified closed port at the node (see col. 3 lines 48-64; col. 10 lines 18-39).

As per claim 3, Vanlint teaches a request decay controller that regulates a wait period ... (see col. 2 lines 44-65).

As per claim 4, Vanlint teaches an active response filter that identifies responses ... (col. 2 lines 59-65, sniffer).

As per claim 5, Vanlint teaches a node data manager that identifies a plurality of nodes on the network ... (see fig 1-2; col 3 lines 15-31).

As per claim 6, Vanlint teaches an outgoing, incoming and a continuous latency calculator ... (see fig 3, and 7-10; col. 2 lines 15-24; col. 6 lines 10-22).

As per claims 7-8, Vanlint teaches self-queuing compensator that adjusts outgoing and incoming latency (see col. 4 lines 36-49).

As per claim 9, Vanlint implicitly teaches minimum latency calculator (see fig 7-10; col. 5 line 57 to col. 6 line 9).

As per claim 10, Vanlint teaches a computer system for calculating latency of a network application comprising: an active latency detection module that calculates latency data based upon periodic requests to a network node that are denied by the network node; a packet capture module that receives application data packets from the network node related to the network application; a trace data storage module that stores network application and a latency trace generation module that calculates latency of the network application based upon the latency data calculated by the active latency detection module and the network application trace data information (see fig 3, 7-10; col. 2 lines 44-67; col. 3 lines 15-64; col. 4 lines 26-35; col. 5 lines 37-41).

As per claims 11-29, they contain the same limitations as discussed in claims 1-10 above. Therefore, they are rejected under the same rationale.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz B. Jean whose telephone number is 571-272-3937. The examiner can normally be reached on 8:30-6:00 M-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571 272 3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Frantz Jean



FRANTZ B. JEAN  
PRIMARY EXAMINER